

**PPG Industries, Inc., Lexington Plant, Fiber Glass Division and Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 11-CA-9260**

April 8, 1981

### DECISION AND ORDER

Upon a charge filed by Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on PPG Industries, Inc., Lexington Plant, Fiber Glass Division, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint and notice of hearing on July 22, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing were duly served on the parties to this proceeding.

The complaint alleges in substance that on September 11, 1979, following a Board election in Case 11-RC-4508, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about September 26, 1979, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 31, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 10, 1980, the Union, Respondent, and counsel for the General Counsel entered into a stipulation of facts and jointly moved to transfer this proceeding directly to the Board. The parties waived a hearing before an administrative law judge and stipulated that no oral testimony is necessary or desired. The parties also agreed that the charge, complaint and notice of hearing, answer,

and stipulation of facts, including the complete record in all related representation proceedings, constitute the entire record in this proceeding.

On October 20, 1980, the Board issued its order approving the stipulation, transferring the proceeding to the Board, and setting a date for filing briefs. Thereafter, the Union, Respondent, and the General Counsel filed briefs.

Upon the entire record in this proceeding, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

PPG Industries, a Pennsylvania corporation, is engaged at its Lexington, North Carolina, plant in the manufacture of fiber glass products. During the past 12 months, Respondent has received goods and materials at its Lexington plant valued in excess of \$50,000 from points outside the State of North Carolina. During the same period, Respondent also shipped directly from its Lexington plant to points outside the State of North Carolina products valued in excess of \$50,000.

The complaint alleges, Respondent admits, and we find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and we find that Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE UNFAIR LABOR PRACTICES

In its answer to the complaint Respondent contends that the Union's certification is invalid because the Union made improper offers to waive initiation fees, threatened disparate treatment for non-members with respect to major economic issues, made substantial misrepresentations,<sup>2</sup> and threat-

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 11-RC-4508, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

<sup>2</sup> With regard to the misrepresentations issue, Respondent's objections alleged that the Union falsely represented to employees that (a) a crew of forming employees had been physically locked in the plant and forced to work overtime; (b) the United States Government had published statistics showing that union workers average 25 percent more earnings than non-union workers; (c) there could not be a strike at the plant unless two-thirds of "the employees involved" voted for a strike; (d) Respondent would have no choice but to pay higher wages and benefits if the employees unionized; (e) premiums for insurance plans and contributions toward pension plans provided in union contracts were completely paid for by the companies; (f) the Union could cause the removal of supervi-

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ened harm to the person and property of employees. Respondent further alleges that the conduct of the members of the "In-Plant Organizing Committee" was attributable to the Union, that the Board's reversal of *Shopping Kart Food Market, Inc.*,<sup>3</sup> shortly after denying review of the Regional Director's overruling of alleged misrepresentations constitutes special circumstances warranting the application of the standard set forth in *Hollywood Ceramics Company, Inc.*,<sup>4</sup> and that the Regional Director's refusal to order a hearing on the alleged improper offers to waive initiation fees was a violation of due process.

The General Counsel contends that all material issues were disposed of in the prior representation proceeding and that Respondent is precluded from relitigating those issues here. The Union likewise argues that all matters raised by Respondent herein were previously considered by the Board.

Our review of the record herein, including the record in Case 11-RC-4508, discloses that, pursuant to a Decision and Direction of Election issued on June 20, 1978, an election was conducted on July 7, 1978. The tally showed 698 votes cast for the Union, 639 against, and 24 challenged ballots. On July 14, 1978, Respondent filed timely objections to conduct affecting the results of the election. After an investigation, the Regional Director for Region 11 issued a Supplemental Decision and Certification of Representative, in which he overruled Respondent's objections in their entirety and certified the Union as the exclusive representative of the employees in the appropriate unit. On September 28, 1978, Respondent filed a timely request for review of the Regional Director's decision. On November 27, 1978, the Board remanded the case to the Regional Director for a hearing on three objections alleging threats of disparate treatment and violence, and denied review in all other respects.<sup>5</sup> The Hearing Officer issued a report on April 19, 1979, recommending that the objections be overruled. Respondent filed exceptions to the Hearing Officer's report, and on September 11, 1979, the Board issued its Decision and Certification of Rep-

resentative (not included in bound volumes), adopting the findings and recommendations of the Hearing Officer. On October 11, 1979, Respondent filed a motion to revoke certification, which the Board denied on December 4, 1979.

In analyzing the alleged misrepresentations contained in Respondent's objections, the Regional Director applied the then-prevailing law of *Shopping Kart* and found that the Union's statements were recognizable as propaganda and did not improperly involve the Board or its processes. On November 27, 1978, the Board, when it granted review as to the objections alleging threats of disparate treatment and violence, denied review of the Regional Director's overruling of the alleged misrepresentations objections. On December 6, 1978, the Board issued its Decision in *General Knit of California, Inc.*,<sup>6</sup> which overruled *Shopping Kart* and returned to the standard set forth in *Hollywood Ceramics*.<sup>7</sup>

Respondent contends that the *General Knit* or *Hollywood Ceramics* standard should be applied here, and that, if it were, the election must be set aside. We do not agree. For in our view, considered under either *Shopping Kart* or the more stringent standard of *Hollywood Ceramics*, the alleged misrepresentations are not sufficient to warrant setting aside this election.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>8</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence. We have disposed of all Respondent's arguments and we therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

Accordingly, we find that Respondent has, since September 26, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor

sors and negotiate as to who would be supervisors; (g) Respondent's executives were profiting inordinately from the employees' labor; (h) Respondent did not care about employees' health and safety and willfully exposed them to cancer-causing carcinogens; (i) the United States Government had endorsed the Union; and (j) the employees could not lose their jobs as a result of striking. Respondent also alleged that the Union mischaracterized various proceedings and actions by the Region, compromised the dignity of the Board representation proceeding, and sought to involve the Board and its processes in the organizing campaign in a partisan way.

<sup>3</sup> 228 NLRB 1311 (1977).

<sup>4</sup> 140 NLRB 221 (1962).

<sup>5</sup> Chairman Fanning, who dissented in part, would have also granted review as to the issues raised by Respondent's Objection 2 alleging improper offers to waive initiation fees; Member Truesdale dissented as he would have denied the request for review in its entirety.

<sup>6</sup> 239 NLRB 619.

<sup>7</sup> In essence, that standard indicates that an election will be set aside where there is a substantial and material misrepresentation of fact, made at a time when the other party cannot make an effective reply, so that the misrepresentation may reasonably be expected to have a significant impact on the election.

<sup>8</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operation described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. PPG Industries, Inc., Lexington Plant, Fiber Glass Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including technicians, plant clericals, crew trainers-forming, and bobbin reclaim employees, at Respondent's Lexington, North Carolina, plant, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes

of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 11, 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 26, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, PPG Industries, Inc., Lexington Plant, Fiber Glass Division, Lexington, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including technicians, plant clericals, crew trainers-forming, and bobbin reclaim employees, at the Employer's Lexington, North Carolina, plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Lexington, North Carolina, plant copies of the attached notice marked "Appendix."<sup>9</sup> Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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<sup>9</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, including technicians, plant clericals, crew trainers-forming, and bobbin reclaim employees, at our Lexington, North Carolina, plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

PPG INDUSTRIES, INC., LEXINGTON  
PLANT, FIBER GLASS DIVISION